



Protocol for Dealing with Breaches in Planning Control relating to Development Undertaken by the County Council under Regulation 3 of the Town and Country Planning General Regulations 1992



Draft

Version 1: May 2018

1.1 Introduction

This protocol sets out the Hampshire County Council's (HCC) approach to planning enforcement of County Council developments. It sets out how the County Council would seek to regulate any breaches of planning control relating to development undertaken by County service providers under Regulation 3 of the [Town and Country Planning General Regulations 1992](#).

The County Council has the responsibility for determining all applications for Regulation 3 development that the County Council wishes to carry out. Regulation 3 developments may include:

- Schools;
- Libraries;
- Museums;
- Country Parks; and
- Development on other County Council owned land (e.g. farms).

A Regulation 3 development has exactly the same level of requirement of compliance as planning permission issued by the County Council for minerals or waste development or indeed by any other planning authority.

It is expected that the County Council will promote best practice in its own development, be it through County Council staff or contractors. Where development is granted planning permission, the applicant is obliged to ensure that all planning conditions are complied with in full. It is very important to ensure compliance to minimise the risk of negative impact to Hampshire County Council's reputation. Applicants should comply with permissions granted as it helps to demonstrate to local communities and other interested parties that the County Council follows its own procedures and complied with permissions granted.

Effective enforcement of Regulation 3 developments is also essential as it ensures public confidence in the planning system. Whilst the enforcement of a breach of planning control relating to a Regulation 3 development is carried out by the relevant local District or Borough Council, the County Council will still have a role to play in helping to address any breaches.

This protocol sets out what the role of the County Council is in relation to enforcement for Regulation 3 developments. The Protocol sets out:

- how breaches of planning control relating to Regulation 3 developments will be addressed and by whom;
- what action the County Council would take action to address any breaches; and
- establishes formal procedures to enable the County Council, both the Regulatory Committee (the Committee) and officers acting under delegated powers, to be consistent and effective in their approach.

Monitoring and enforcement of minerals and waste developments are not covered by this protocol. This is covered by a separate [Planning Site Enforcement and Monitoring Plan](#). The protocol also sits alongside the [Development Management Charter \(2016\)](#).

1.2 Whose responsibility is it to ensure Regulation 3 planning permissions are complied with?

When planning permission is granted, it is the applicant's responsibility to ensure that all conditions associated with a planning permission are complied with.

1.3 What is a breach of planning control?

Breaches of planning control are likely to be brought to the attention of the County Council either by routine site inspections for other development at the site or following a complaint from a member of the public or other third party.

The **three types of breach** that may be likely to occur during development are:

- I. **Breach of conditions attached to an extant planning permission;**
- II. **The carrying out of development where there is no planning permission and such a planning permission is unlikely to be granted; and**
- III. **The carrying out of development where there is no planning permission but permission is likely to be granted retrospectively.**

Breaches of planning control may include:

- I. **Unauthorised development;**
- II. **Unauthorised erection of a structure;**
- III. **Development not in accordance with the approved plans of the planning permission;**
- IV. **Material change of use of a building or land;**
- V. **Failure to comply with the conditions attached to a planning permission; and**
- VI. **Failure to properly maintain land so that it affects the amenity of the area.**

Relevant Government guidance is found in the [National Planning Policy Framework \(NPPF\)](#) (2012) which came into effect in March 2012. This states that:

“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local Planning Authorities should consider publishing a Local Enforcement Plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.”

It is the applicant's responsibility to ensure there is not a breach of planning control. [National Planning Practice Guidance](#) gives details about what is a breach of planning control:

A breach of planning control is defined in [section 171A of the Town and Country Planning Act 1990](#) as:

- *the carrying out of development without the required planning permission; or*
- *failing to comply with any condition or limitation subject to which planning permission has been granted.*

Any contravention of the limitations on, or conditions belonging to, permitted development rights, under the [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#), constitutes a breach of planning control against which enforcement action may be taken.

Paragraph: [001 PPG Planning enforcement](#) – overview

The [Town and Country Planning Act 1990](#) imposes a general but not mandatory duty to ensure compliance with planning control. Accordingly, because there is an element of discretion as to whether or not it might be expedient to take appropriate action, there is a need for procedures to be adopted and followed to ensure that the County Councils approach is consistent and effective when deciding what action should be taken.

Examples of a breach of planning control are:

- Commencing on site without planning permission having yet been granted;
- Failing to comply by a condition of a planning permission;
- Having a development with planning permission that has lapsed due to exceeding a condition with a timescale giving temporary permission; and
- Failing to discharge a condition requiring submission and approval of information via an Article 27 application.

1.4 How to report a breach of planning control

You can contact the Strategic Planning team by:



01962 845891 or 01962 846746



Strategic Planning, Economy, Transport & Environment
Department, Hampshire County Council, Elizabeth II Court West
1, The Castle, Winchester, Hampshire, SO23 8UD



planning@hants.gov.uk

Before making a complaint it is helpful to have as much information as possible, such as:

- **Description of the possible breach;**
- **Date the activity started (is it continuing?);**
- **Site address;**
- **Name and any details of the site owner or those involved (including vehicle registration numbers if possible); and**
- **Name, address and telephone number or email of the complainant.**

Confidentiality

All complaints received by the County Council will be dealt with in the **strictest confidence** and details of the person reporting will not be made known without their agreement. The **nature of the alleged breach is not confidential**. It is important to note that if the complaint progressed into a court of law you may be requested to provide evidence.

Anonymous reports will not be investigated unless they relate to a matter of public safety or serious environmental damage or harm to amenity.

1.5 Who is responsible for enforcement for Regulation 3 developments?

The County Council is only authorised in law to take enforcement action against development which is considered a 'county matter' - for minerals and waste development.

Paragraph 11 of Schedule 1 of the [Town and Country Planning Act 1990](#) clarifies that although the County Council can enforce against mineral and waste developments granted by the authority, all other enforcement powers fall to the District planning authority (i.e. the relevant District or Borough Council).

In the event that a complaint is received by the County Council about a County Council development, County Council planning officers will attempt to liaise and resolve any issues which the applicant before the need for enforcement measures to be undertaken by the District or Borough Council (see [section 1.6](#)).

1.6 What will happen if the County Council receives a complaint about a Regulation 3 development?

Procedure

The procedure applied to **dealing with complaints** about Regulation 3 developments is set out in Figure 1.

Registering

A record of the complaint will be added to the County Council's planning database upon receipt once it has been ascertained that the complaint relates to a permission granted by the Council for a Regulation 3 development.

Site Monitoring and Gathering of Information

In instances where there are breaches of planning control associated with a Regulation 3 development, the County Council will try and resolve the issue in discussion with the applicant.

Officers acting for the County Council as planning authority may need to do initial investigation of any breaches of planning control which relate to developments permitted by the County Council once informed about them.

In such instances, County Council officers and contractors working with or for the County Council shall enable site inspections to take place and assist in providing any necessary information.

Figure 1:

Procedure for dealing with complaints

Register and acknowledgement of complaints: A complaint will be *registered* and *acknowledged* within 3 working days of receipt. This may include clarification of the details of the complaint

Checking the facts: The investigating officer will investigate the complaint. Further investigation may include *discussions* with the applicant or a *site inspection*

If no breach is found: The complainant(s) will be *informed within 10 working days* of the date of receipt of the complaint

If a breach is found and is resolved: The investigating officer will speak to the applicant and negotiate to try and resolve the breach. If the breach is resolved, the investigating officer will inform the complainant(s) about the outcomes of negotiations *within 10 working days* of the date of receipt of the complaint

If a breach is found and is not resolved: The *relevant District/Borough Council* will be informed of the complaint / breach. The *District/Borough* will determine if it is expedient for them to take enforcement action. The investigating officer will inform the complainant(s) and applicant involved in the event the matter is referred to the District.

Report to Regulatory Committee: A report will be made to the next available Regulatory Committee about the breach and the investigations undertaken by the relevant District /Borough Council.

Right to enter land

All officers, or other persons duly authorised in writing by the County Council, may at any reasonable hour enter any land to ascertain whether there has been a breach of planning control in accordance with the [Town and Country Planning Act 1990](#).

Any person that wilfully obstructs an authorised person in carrying out these duties is committing an offence, punishable on summary conviction to a fine not exceeding level 3 on the standard scale.

Who will be kept informed?

If no breach of planning control is found by officers, the complainant will be informed accordingly.

Breaches of planning control will be brought to the attention of the Regulatory Committee as part of a quarterly enforcement update (see [section 1.7](#)).

What happens if the County Council cannot resolve the complaint?

As the County Council cannot instigate enforcement action on its own development, in the event that a breach is identified and not addressed appropriately by the applicant, the complaint can be referred to the relevant District / Borough Council for investigation. This approach may be employed for serious breaches of planning control as a last resort and considered on a case by case basis.

The investigation enforcement procedures of the relevant District / Borough Council will then apply. The issue on whether it is expedient to take enforcement action will be determined by the District / Borough Council and not the County Council.

1.7 Informing the Regulatory Committee of enforcement activities

Where there has been a breach of planning control on a County Council development site, the matter will be reported to the next available and suitable committee (on the request of the chairman) or at least a four monthly basis.

1.8 Review of this Protocol

This Protocol will be reviewed every two years. The next review is due in May 2020.